Supreme Court, U.S.
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No. 00-492

IN THE

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MICHAEL HERMAN BOZEMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA

RESPONDENT'S BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

Respondent, Michael Herman Bozeman respectfully requests this Court to deny certiorari on the petition filed by the State of Alabama. In effect, the Petition is asking this Court to excuse a mistake made by local officials in clear violation of the language of the Interstate Agreement on Detainers (IAD),[1] Code of Alabama, § 15-9-81. This matter has been settled by the highest court of the State, and it does not affect any jurisdiction or authority outside of Alabama; this Court should not be troubled with such a matter. However, if this Court does decide to grant certiorari, the statute should be strictly construed according to its plain and unambiguous language and in keeping with its stated purpose of ensuring the rights of prisoners, and the judgment of the Alabama Supreme Court should be affirmed.

Facts Upon Which the Case is Based

Respondent takes issue with the facts that Petitioner has put forward in the Statement of the Case in its Brief. The Petitioner notes that charges on which this case is based "arose out of several incidents that occurred in June of 1995." Petitioner's Brief at 4. In fact, Petitioner is well aware that all of the incidents occurred within a very short span of time in the early morning hours of June 15, 1995, the same date on which Bozeman was arrested. (R. 34-35, 59-60, 75-76,

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[1]The IAD is also known as the Uniform Mandatory Disposition of Detainers Act (UMDDA) and is codified in Code of Alabama, 1975, § 15-9-81.

83-84, 97-98, 108, 118; H.R. 222-223; C. 18)[2] The federal charges of intimidating a witness seem to be connected to the shooting incidents with which Bozeman was charged in the present case. (H.R. 205-206, 222-223) However, there is no dispute that the investigation of the shooting incidents was done by the Opp, Alabama Police Department and that no further investigation was done after June of 1995. (H.R. 206-207) It is also undisputed that the Defendant was in federal custody from June 16, 1995 onward through the relevant times in this matter. (H.R. 219, C. 182)

Bozeman pled guilty to federal drug charges and was sentenced in federal court, the United States Court for the Middle District of Alabama, on November 3, 1995 in Case No. 95-140-N. (H.R. 219-220, C. 182) The federal presentencing report shows that the shooting charges with which Bozeman was charged in the present case were still pending at the time of his federal sentencing. (C. 183)

Bozeman was indicted for possession of a controlled substance in Covington County Case CC-95-350 in September of 1995. (H.R. 208, 225) On November 8, 1995, Bozeman was transferred to the custody of the Sheriff of Covington County, Alabama, was appointed counsel, arraigned, and was then returned to federal custody. (H.R. 209, C. 177-178). The charges in CC-95-350 were nol prossed on June 4, 1996. (H.R. 213-214) Bozeman was returned to federal custody without having been tried on the pending shooting

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[2]Respondent has chosen to adopt the designations for various parts of the record used by Petitioner. *See* Petitioner's Brief at 3-4 n.1.

charges; in fact, Bozeman was not indicted for the shooting charges until September of 1996. (C. 1-4)

Following his indictment, Covington County placed a detainer on Bozeman. (H.R. 214, C. 180) The same letter that requested that a detainer be placed on Bozeman also requested that Bozeman be transferred to Covington County. (C. 180) However, Bozeman had been moved from the federal penitentiary in Atlanta to the federal penitentiary in Marianna, Florida, and the Covington County District Attorney's office sent a second letter requesting that he be transferred to Covington County. (H.R. 212-213, C. 179)

In response to the prosecutor's request, Bozeman was brought from the federal penitentiary to Covington County in the custody of the Sheriff of Covington County on January 23, 1997. (C. 172, H.R. 215) On January 24, 1997, counsel was appointed for Bozeman and he was arraigned on the shooting charges. (C. 120) Since Bozeman's counsel had been appointed only moments before the arraignment, he requested and was granted leave to raise any issues that would normally be addressed prior to arraignment. (Arr. 4, 6) Also, a *pro se* motion to dismiss mailed by Bozeman arrived and was filed in the Clerk's Office on January 24, 1997. (C. 8-14) This motion invoked Articles IV(e) and V(e) of the IAD and requested a dismissal because of the transfer that had occurred in 1995.

Subsequent to the arraignment, Bozeman was again transferred back to the custody of the federal government. (H.R. 215, C. 172) At no point did Bozeman ever request that he be transferred back to federal custody after having been

brought to Covington County. (H.R. 224) Following the post-arraignment transfer in the present case, Bozeman's counsel filed a Motion to Dismiss claiming that his transfer prior to trial violated the IAD. (C. 73-74) Bozeman's counsel subsequently filed a memorandum brief that also raised the issue that the transfer to Covington County in November of 1995 while the shooting charges were pending (although he had not been indicted on them) also violated the IAD. (C. 79-85) This brief also made it clear that Bozeman claimed a violation based on Article IV of IAD "because the State filed a detainer and obtained custody of the Defendant." (C. 84)

The trial court deferred consideration of the IAD issue until after trial. (R. 11-12) The case proceeded to trial, and the jury returned guilty verdicts on all five counts. (R. 192-193, C. 95) The Court scheduled a hearing on the IAD issues which was held on March 12, 1997. (H.R. 197) Testimony from the District Attorney was taken at the hearing which established that Covington County had placed a detainer on Bozeman and had requested (and obtained) temporary custody of him from the federal authorities on three occasions. (H.R. 209-215) Documents were also introduced into evidence. (C. 171-183) There is no disagreement about the basic sequence of events, and the trial court included these findings in its order denying Bozeman's motion to dismiss. (C. 105)

Bozeman moved for a new trial, claiming that the violation of the IAD had hampered his ability to communicate with his counsel in preparation for trial. (C. 108-109) His request was denied following sentencing. (R. 272) Bozeman was sentenced on May 21, 1997 and an appeal

followed. (R. 268-273). The Alabama Court of Criminal Appeals affirmed the judgment by a memorandum opinion issued on May 8, 1998, but the Alabama Supreme Court reversed the judgment on April 21, 2000. The State of Alabama has now filed a petition for writ of certiorari with this Court.

REASONS FOR DENYING THE PETITION

A. The Language of the Statute is Clear

The Petitioner claims that "the Alabama Supreme Court did not consider the State's argument that Bozeman had not demonstrated any harm from the technical violation of Article IV(e) of the IAD." Petitioner's Brief at 10. In fact, the State's contention that harm needed to be shown was considered and rejected by the Alabama Supreme Court because the language of the statute is clear. "The IAD is not ambiguous. It would require a tortured reading of the statute for us to conclude, as the State suggests, that a brief violation of the IAD can be ignored." *Ex parte Bozeman*, No. 1971759, slip op. at 8 (Ala. Apr. 21, 2000). Petitioner's Brief at App. 8.

The Petitioner also criticizes the Alabama Supreme Court because it "applied state statutory construction law in reaching its decision." Petitioner's Brief at 11. In fact, the Alabama Supreme Court merely used the principle that a court ought to be bound by the plain meaning of the words in a statute, hardly a concept unique to Alabama. *See Ex parte Bozeman*, No. 1971759, slip op. at 8-9 (Ala. Apr. 21, 2000). Petitioner's Brief at App. 9. The interpretation of the Alabama Supreme Court is strengthened when one considers that a primary reason for the adoption of the IAD was to rec-

tify prosecutorial abuses that were common before the advent of the IAD. "Since the [Agreement] is remedial in character, it should be construed liberally in favor of the prisoner." Council of State Governments, Handbook on Interstate Crime Control 134 (1978 ed.), quoted in *Carchman v. Nash*, 473 U.S. 716, 735 n.1. (Brennan, J., dissenting).

B. The Split Among Various State and Federal Jurisdictions Does Not Interfere With Federal Authority.

The Petitioner is, of course, correct that there is (and has been) a split among various jurisdictions regarding how strictly to interpret the IAD. What is not certain is how pressing a problem this is as a practical matter. In *Taylor v. United States*, 504 U.S. 991 (1992), Justice White noted the division and chided the Court for not granting certiorari.[3] Yet, the system continues to operate eight years later.

This Court has noted that the IAD "is a congressionally sanctioned interstate compact the interpretation of which presents a question of federal law." *Cuyler v. Adams*, 449 U.S. 433, 442 (1981). Notwithstanding this pronouncement, the IAD is also a state law in the states that have adopted it. *Reed v. Farley*, 512 U.S. 339, 347 (1994) ("While the IAD is

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[3]Custody of Taylor had been obtained pursuant to a writ of habeas corpus ad prosequendum. *Id.* The relation of the IAD to writs of habeas corpus ad prosequendum had been discussed by this Court in *United States v. Mauro*, 436 U.S. 340 (1978). Although a detainer had apparently been filed prior to the writ, it had not been requested by the United States Attorney and the United States Attorney was not even aware of the detainer. *United States v. Taylor*, 947 F.2d 1002, 1003 (1st Cir. 1991). Moreover, there were issues of waiver: the defendant told the magistrate that he would prefer to be kept in state custody rather than federal custody. *Id.*

indeed state law, it is a law of the United States as well."). The purpose of the Compact Clause, U.S. Const. Art. I, 10, cl. 3, is "to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Cuyler v. Adams*, 449 U.S. at 440. The only aspect of the IAD that implicates possible interference with federal authority is the obligation that sending states have to cooperate with receiving states. All other aspects of the IAD have an effect only within a specific jurisdiction. If Congress had wished to, it could have passed the IAD as a federal law preempting all similar state laws (undoubtedly invoking the Commerce Clause as justification). It did not do so. Instead, it joined the IAD as a member state.[4]

The Petitioner's Brief expresses great concern that prisoners might be treated differently in Georgia than they would be in Alabama. Petitioner's Brief at 17-18. However, such is the case already without the IAD. Each state has its own criminal laws, and they are not identical. Constitutional concerns set a floor below which a state may not fall in the man-

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[4]The Federal government joined the IAD in 1970. *Carchman v. Nash*, 473 U.S. 716, 728 (1985). However, the IAD was "drafted in 1956 by the Council of State Governments . . . founded on a 'statement of aims or guiding principles' drawn up in 1948." *Carchman v. Nash*, 473 U.S. at 748 (Brennan, J., dissenting). It was then included in Council of State Governments, Suggested State Legislation Program for 1957 (1956). *United States v. Mauro*, 436 U.S. 340, 351, 363 n.28 (1978). Twenty-five states had joined the IAD by the time that Congress considered the law in 1970. *Carchman v. Nash*, 473 U.S. at 749 n.18. *Cf. United States v. Mauro*, 436 U.S. 340, 355 (1978) (quoting Senator Hruska as stating that the IAD had "already been adopted by 28 States" during Senate debates on joining the IAD).

ner in which it chooses to enforce its laws, but other than this limitation, a state is free to act within its own sphere. If the Supreme Court of Alabama chooses to dismiss Bozeman's Alabama convictions, such an action does not affect any other state. His federal conviction was unchanged, and if he had pending charges in any other state, that state would still have been free to prosecute him under that state's laws.

The Petitioner's suggestion that in Alabama one can "get away with murder" is a cheap shot. Petitioner's Brief at 18. The Petitioner knows that Bozeman did not hurt anyone, and it is aware that he has been leading a quiet and peaceful life since being released from federal prison. Nevertheless, "the unfair and inconsistent results" that concern the Petitioner, Petitioner's Brief at 18, are certainly no more unfair or inconsistent than the fact that a criminal sentenced in Covington County, Alabama will receive a harsher sentence than a criminal sentenced on identical facts across the state line in Okaloosa County, Florida. "Unfair and inconsistent" is a charge better leveled at any member state that chooses when and if a prisoner's rights under the IAD are given due respect.

C. The Decision of the Alabama Supreme Court is Not in Conflict with any Prior Decision of this Court Dealing with the IAD

Although Petitioner attempts to portray *Ex parte Bozeman*, No. 1971759 (Ala. Apr. 21, 2000), as being in conflict with "this Court's prior decisions concerning the purposes behind and construction of the IAD . . . this Court's decisions on statutory construction, on technical violations of statutes or

rules, and on application of the harmless error rule to violations of statutes," Petitioner's Brief at 19, a closer look at the cases cited shows that this portrayal is false. In fact, many of the cases put forward by the Petitioner actually support the reasoning of the Alabama Supreme Court.

The Petitioner cites *Carchman v. Nash*, 473 U.S. 716 (1985), for the proposition that the Alabama Supreme Court "ignored this Court's prior decisions concerning the purposes behind and construction of the IAD." Petitioner's Brief at 19. In fact, in *Carchman v. Nash*, this Court reversed the decision of the Third Circuit Court of Appeals which "decline[d] to adopt a technical interpretation of the relevant language . . . . . and instead relied on the broader purposes of the legislation." 473 U.S. at 723 (quoting *Nash v. Jeffes*, 739 F.2d 878 (3d Cir. 1984)). This Court considered the plain language of the IAD and concluded that the IAD did not apply to detainers based on violation of probation. 473 U.S. at 74-726. The broader purposes of the legislation did not compel a conclusion "contrary to the plain language of the Agreement." 473 U.S. at 729.

The Petitioner has misrepresented this Court's holding in *New York v. Hill*, 120 S. Ct. 659 (2000), stating that *Hill* stands for the proposition that "technical violation of IAD does not require dismissal of indictment." Petitioner's Brief at 19-20. *Hill* was decided on the basis of waiver, not on the basis of a technical violation,[5] and this Court relied on the

[5]In fact, this Court expressed caution regarding a too expansive interpretation of the IAD. Commenting upon the suggestion that an "agreement in open court to a trial date outside the allowable time period can itself be viewed as a "necessary or reasonable continuance" for "good cause

plain language of the statute: "Nothing in the IAD requires or even suggests a distinction between waiver proposed and waiver agreed to." 120 S. Ct. at 666.

In *United States v. Mauro*, this Court held that a writ of habeas corpus ad prosequendum was not a detainer, vindicating the clear language of the statute, although this Court did hold that once a detainer had been lodged, a writ of habeas corpus ad prosequendum could operate as a request for temporary custody under Article IV of the IAD. 436 U.S. 340, 361, 363 (1978).

Although the Petitioner wants to maintain that *Reed v. Farley*, 512 U.S. 339 (1994), applies a harmless error analysis to the IAD, in fact, this Court's opinion hinged on the fact that it determined that the error complained of was not cognizable under 28 U.S.C. § 2254, the federal habeas corpus statute.[6] 512 U.S. at 342. Moreover, the issue of waiver, made explicit in *New York v. Hill*, 120 S. Ct. 659 (2000), is implicated in *Reed v. Farley* because the opinion notes that there were "postponements made and explained in [defendant's] presence in open court," and the defendant registered

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shown in open court,'" this Court noted that even though such an agreement "might sometimes merit this description, it is far from clear that it always does so, or that it does so here." 120 S. Ct. At 665 n.1. The clear implication is that the plain language of the statute does matter and that, absent waiver, the holding of *Hill* might very well have been different.

[6]The dissent believes that the "unmistakable clarity" of the IAD makes a violation of its terms by a member state a serious enough matter to be considered under *habeas corpus* review. *Reed v. Farley*, 512 U.S. 339, 367-368 (1994) (Blackmun, J., dissenting).

no objection to the trial date at the time it was set, and suffered no prejudice attributable to the delayed commencement." 512 U.S. at 342.[7]

D. The Decision of the Alabama Supreme Court is Not in Conflict with any Prior Decision of this Court Dealing with Harmless Error

The cases applying harmless error analysis to other rules and statutes are also inapposite. Most notably, none of the other rules or statutes have provisions that say "if you do this (or do not do this), a particular sanction will be imposed." The IAD is clear and unambiguous in imposing the sanction of dismissal for violation of its terms. *See* IAD, art. III(d); IAD, art. IV(e); IAD, art. V(c). Petitioner's Brief, App. 35-39.

In *Peguero v. United States*, 526 U.S. 23, 24-25 (1999), the trial judge failed to notify the defendant of his right to appeal, but this was a harmless error because the defendant was aware of this right. Rule 32(a)(2) of the Federal Rules of Criminal Procedure under which Peguero was sentenced required notification of the right to appeal but did not provide for any consequences if the notification were not given. 526 U.S. at 26.

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[7]In fact, Reed requested a delay himself because he needed more time to prepare. *Reed v. Farley*, 512 U.S. 339, 353 (1994). At the first pretrial conference, at which the trial date was set, Reed "indicate[d] a preference for trial at a time when he would be out of jail on bond" and noted the dates on which he expected to be released from federal custody which were after the 120 day period would have expired. *Id.* at 342-343.

Federal Rule of Procedure 8(b) came under scrutiny in *United States v. Lane*, 474 U.S. 438 (1986). The claim was that one count of an indictment was improperly joined to the other five counts. *Id.* at 442. " The Court of Appeals held that misjoinder' is inherently prejudicial.' " *Id.* at 444. However, nothing in the language of Rule 8(b) requires automatic reversal for misjoinder. *See Id.* at 443 n.3 (quoting Rule 8(b)).[8] This Court held that a harmless error analysis under Rule 52(a) was appropriate to misjoinder and held "that an error involving misjoinder 'affects substantial right' and requires reversal only if the misjoinder results in actual prejudice because it 'had substantial and injurious effect of influence in determining the jury's verdict.' " *Id.* at 449 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)). This Court concluded that "[o]nly by so holding can we bring rules 8 and 52(a) 'into substantial harmony, not into square conflict.' " *Id.* (quoting *Kotteakos,* 328 U.S. at 775). An analysis requiring a violation of the IAD to be considered harmless error unless the prisoner proved prejudice would be in square conflict with the unambiguous language of the IAD.

The Bail Reform Act of 1984 requires a detention hearing to be held " 'immediately upon the person's first appearance before the judicial officer' " and provides that a continuance of the hearing may not exceed five days. *United States v. Montalvo-Murillo*, 495 U.S. 711, 714 (1990) (quoting 18 U.S.C. § 3142(f)). Montalvo-Murillo's hearing was contin-

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[8]The government contended that no misjoinder had occurred although it did not contest the Court of Appeals' holding that misjoinder is inherently prejudicial. *Lane*, 474 U.S. at 444 n.5.

ued beyond the permissible time limit, and the district court, affirmed by the Court of Appeals, found "that pretrial release on conditions was the appropriate remedy for violation of the statutory requirement." [9] *Id.* at 716. In reversing, this Court noted,

> [a] prompt hearing is necessary, and the time limitations of the Act must be followed with care and precision. But the Act is silent on the issue of a remedy for violations of its time limits. Neither the timing requirements nor any other part of the Act can be read to require, or even suggest, that a timing error must result in release of a person who should otherwise be detained.

Id. at 716-717. The contrast with the IAD is obvious. The IAD does more that just suggest a remedy: it mandates dismissal of the indictment as the sanction for violating its terms.

In *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), the district court had dismissed some indictments because of prosecutorial misconduct before the grand jury that returned the indictments. *Id.* at 253. This Court held that the supervisory authority of the district court should be limited by the harmless error provisions of Federal Rule of Criminal Procedure 52(a), stating that "federal courts have no more discretion to disregard the Rule's mandate than they do to disregard constitutional or statutory provisions." *Id.* at 255. Of course, Petitioner is suggesting that courts should

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[9]Montalvo-Murillo promply fled and was still at large when the case reached this Court. *Id.* at 713.

disregard the statutory provisions of the IAD; Respondent maintains that they are without discretion to do so.

E. The Facts and Statutory Construction Do Not Support a Grant of Certiorari

There is a clear distinction between the rules that were technically violated in the cases cited by the Petitioner and the statutory provision that was violated in the present case. The Petitioner does not like the result, but to analogize a violation of the IAD to the rule violations of *Peguero v. United States*, 526 U.S. 23 (1999), *United States v. Lane*, 474 U.S. 438 (1986), *United States v. Montalvo-Murillo*, 495 U.S. 711 (1990), and *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), "would require a tortured reading of the statute." *Ex parte Bozeman*, No. 1971759, 2000 WL 429936 (Ala. Apr. 21, 2000). Petitioner's Brief at App. 8. The IAD, by its own terms, clearly imposes a remedy for violations; to hold contrary to its plain language would in effect make the words of the statute meaningless. This is also in keeping with the time-honored tradition of statutory construction which looks first to the plain meaning of the words used in the statute.

> It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times.

Market Company v. Hoffman, 101 U.S. 112, 115-116 (1879).

The determination of the Alabama Supreme Court should be respected. As noted in *Reed v. Farley*, 512 U.S. 339, 355 (1994), the IAD is both federal law and state law, and "[w]e have no more reason to suppose that the Supreme Court of [the state] seeks to undermine the IAD than we have to suppose that it seeks to undermine any other law of [the state]." Moreover, this court has noted that

> [t]he legislative history of the [IAD], including the comments of the Council of State Governments and the congressional Reports and debates preceding the adoption of the Agreement on behalf of the District of Columbia and the Federal Government, emphasizes that a primary purpose of the Agreement is to protect prisoners against whom detainers are outstanding.

Cuyler v. Adams, 449 U.S. 433, 448-449 (1981). The interpretation of the IAD promoted by the Petitioner would eviscerate any protection for prisoners. The Petitioner claims that "the state could suffer great harm by being required to let a possible criminal go free," Petitioner's Brief at 20-21, but it had it within its own power under the IAD to prevent this result in both this particular case and indeed all cases. A prisoner, by contrast, would no longer have the explicit statutory protection of the IAD if this Court allows member state not to comply "where there is no great harm to the prisoner," Petitioner's Brief at 20. There is, by definition, great harm to the prisoner if the specific prisoner protections contained within the statute are all gutted by the member states

in the name of "technical violations." No personal specific harm need be shown.

Finally, the Petitioner's argument overlooks the very real damage that would be done to any chance of rehabilitation if it is made clear that the prisoner is held to a different standard than the receiving states. The benefits to the prisoner would be seen, and rightly so, as illusory.[10] A prisoner must follow the hypertechnical procedures,[11] but the government can violate the law with impunity. One may question the wisdom of the legislature in adopting the IAD, but once it has done so, the unambiguous language of the statute must be given effect. It is simply wrong to pardon technical violations on the part of the government while waving similar technical violations tauntingly in the face of prisoners.

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[10]Can anyone honestly conceive of a situation in which an elected judge, such as all judges in Alabama are, freed from the constraints of the plain language of the IAD, would ever find prejudice to the prisoner sufficient to overcome the vague "purposes behind the IAD?"

[11]The cases from all jurisdictions almost uniformly require a prisoner initiating the resolution of a detainer under Article III of the IAD to adhere strictly to the technical requirements of the statute. *See* Leslie W. Abramson, "The Interstate Agreement of Detainers: Narrowing Its Availability and Applications, 21 New Eng. J. on Crim. & Civ. Confinement 1, 18-20 (1995). *See also, e.g., Turner v. State*, 584 So. 2d 925, 930 (Ala. Crim. App. 1991); *Haywood v. State*, 501 So. 2d 515, 518 (Ala. Crim. App. 1986); *St. John v. State*, 473 So. 2d 658, 661 (Ala. Crim. App. 1985); *Whitley v. State*, 392 So. 2d 1220, 1223-1224 (Ala. Crim. App. 1980). In construing the language of Article IV strictly, the Alabama Supreme Court was merely following prior Alabama case law strictly construing Article III.

CONCLUSION

The issue raised by the Petitioner is not a pressing matter and would not seem to involve a large number of cases. In fact, it is within the Petitioner's power to avoid the situation entirely in the future simply by following the letter of the law with regard to IAD transfers of custody. Moreover, the effect of the Alabama Supreme Court's ruling in *Ex parte Bozeman*, No. 1971759 (Ala. Apr. 21, 2000) only affects Alabama; it does not impede the ability of any other jurisdictions to enforce their laws. For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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